

# Dun & Bradstreet Pays \$9 Million SEC Fine to Settle China FCPA Allegations; Obtains Declination from DOJ

## 邓白氏支付 900 万美元证交会罚金就涉及中国的 FCPA 指控达成和解；取得司法部的拒绝起诉决定

April 26, 2018

2018 年 4 月 26 日

Anti-Corruption 反腐败

---

On April 23, 2018, Dun & Bradstreet Corporation (“D&B”), a professional services company providing credit reporting information and other commercial data to businesses, agreed to pay more than \$9 million in connection with a cease and desist order with the U.S. Securities and Exchange Commission (“SEC”) to settle allegations that it violated the books and records and internal controls provisions of the U.S. Foreign Corrupt Practices Act (“FCPA”). The DOJ declined to prosecute D&B criminally.

2018 年 4 月 23 日，邓白氏公司（“邓白氏”），一家为企业提供征信信息及其他商业数据的专业服务公司，同意就美国证券交易委员会（“证交会”）的一项停止与禁止令支付超过 900 万美元，以就其违反美国反海外腐败法（“FCPA”）账簿和记录以及内部控制规定的指控达成和解。司法部暂缓对邓白氏提起刑事诉讼。

### Background and Alleged Misconduct 背景和被指不当行为

---

D&B is a Delaware corporation headquartered in New Jersey that maintains a class of publicly traded stock on the New York Stock Exchange. D&B engages in business through various subsidiaries, joint ventures, and strategic partnerships and maintains separate geographic divisions that oversee their operations.

邓白氏是一家总部位于新泽西州的特拉华州公司，该公司有一类股票在纽约证券交易所上市。邓白氏通过多家子公司、合资企业和战略合伙经营业务，并设有独立的区域部门监督其运营。

According to the SEC’s [Cease-and-Desist Order](#), between 2006 and 2012, two of D&B’s Chinese subsidiaries made improper payments to government officials and state owned enterprises (“SOEs”) to obtain and retain their business and to acquire information critical to D&B’s data-sales operations. The specific misconduct varied by subsidiary.

根据证交会的停止和禁止令，2006年至2012年，邓白氏的两家中国子公司对政府官员和国有企业进行了不当付款，以获得和保留其业务，并获取对邓白氏数据销售业务十分重要的信息。两家子公司的具体不当行为有所不同。

## **HDHC Joint Venture**

### **合资企业 HDHC**

In 2006, in an effort to grow its Chinese financial information reporting business, D&B Greater China formed HDHC, a joint venture with Huaxia, a credit reporting company based in China. Due diligence conducted by D&B Greater China as part of HDHC's formation revealed that, unlike D&B's China operations, Huaxia used government connections to source financial statement information from various Chinese government agencies rather than publicly available sources. D&B management understood that Huaxia routinely obtained this highly regulated and otherwise-restricted information by making improper payments to government officials. After HDHC was formed, a D&B Greater China manager stopped the practice of Huaxia employees directly making improper payments to Chinese government officials and, under the mistaken belief that using third parties would shield the company from legal liability, implemented the practice of using third-party agents to make the payments and obtain data. Payments were recorded as legitimate data acquisition expenses. In the fall 2008, D&B Greater China management sought to reduce HDHC's financial data acquisition costs, which were significantly higher than similar costs in other markets. D&B Greater China management considered eliminating the use of agents and authorizing HDHC employees to purchase data directly from government officials; however they were concerned that HDHC would be unable to obtain proper tax receipts under this proposal. Ultimately, D&B Greater China management decided to maintain the status quo and this practice continued for six years.

2006年，为了发展其中国财务信息报告业务，邓白氏大中华与一家中国征信公司华夏国际信用集团（“华夏”）组建了合资企业 HDHC。邓白氏大中华在组建 HDHC 时进行的尽职调查显示，与邓白氏中国的运营方式不同，华夏利用政府关系而非公开可获得资源从中国各政府机构获取财务报表信息。邓白氏管理层了解，华夏经常通过对政府官员进行不当付款来获取这种受到严格监管和限制的信息。在 HDHC 设立后，邓白氏大中华的一名经理停止了华夏员工直接向中国政府官员进行不当付款的做法，并且在利用第三方将使该公司免于承担法律责任的错误认识下实施了利用第三方代理人进行付款和获取数据的做法。这些付款被记录为正当的数据获取费用。2008年秋，邓白氏大中华管理层试图降低 HDHC 的财务数据获取成本，这些成本明显高于其他市场中的类似成本。邓白氏大中华管理层考虑不再使用代理人并授权 HDHC 员工直接向政府官员购买数据；但是他们担心采用此建议则 HDHC 无法获得适当的税务收据。最后，邓白氏大中华管理层决定维持现状，这一做法持续了六年。

## **Roadway Subsidiary**

### **子公司车道**

In 2009, D&B acquired Roadway, a leading provider of direct marketing services in China. Due diligence revealed a significant risk related to local data privacy laws providing for criminal sanctions for entities that illegally obtained citizens' personal information from the Chinese government or organizations in fields such as finance and telecommunications. D&B knew that Roadway had obtained a significant amount of its consumer data from third party vendors and therefore needed to ensure that Roadway had legally obtained its pre-acquisition data and that Roadway would employ legal means of acquiring data going forward. D&B failed to ensure the legality of the Roadway-acquired data during the due diligence process. Moreover, D&B failed to review and audit the sources from which Roadway's employees acquired consumer data after the transaction closed. That data was later found to have been obtained

in violation of Chinese law. Finally, D&B failed to take steps—pre- and post-acquisition—to determine both whether Roadway employees were paying clients improper kickbacks to secure their business and whether those clients were SOEs. Roadway employees had paid such kickbacks in over 34 percent of customer transactions, to more than 150 government agencies and SOEs, and inaccurately recorded them as legitimate promotion and advertisement expenses.

2009 年，邓白氏收购中国领先的直销服务提供商车道。尽职调查显示该公司存在违反当地隐私法律的重大风险，这些法律规定，实体从中国政府或金融和电信等领域的组织非法获取公民个人信息应受到刑事制裁。邓白氏知道，车道已从第三方供应商处获取大量的消费者数据，因此需要确保车道在收购前合法地获取了数据且在将来将采用合法方式获取数据。邓白氏在尽职调查过程中未确保车道所获数据的合法性。而且，在交易完成后，邓白氏未审核车道员工获取消费者数据的来源。后来发现，获取这些数据的方式违反了中国的法律。最后，于收购前及收购后邓白氏都未采取措施以确定车道员工是否向客户支付了不当回扣以获取业务，以及这些客户是否为国有企业。车道员工在超过 34% 的客户交易中对超过 150 家政府机构和国有企业支付了回扣，而且不准确地将其记录为正当促销和广告费用。

## Cooperation and Remedial Efforts 合作和补救努力

Both the SEC and DOJ—the latter in its [declination letter](#)—acknowledged D&B's self-disclosure, cooperation, and remedial efforts.

证交会和司法部（后者在[拒绝起诉函](#)中）肯定了邓白氏的主动披露、合作和补救努力。

The agencies credited D&B's cooperation during the investigation by voluntarily producing documents from overseas, summarizing the findings of its internal investigation, translating key documents, providing timely summaries of witness interviews, making employees available to SEC staff, and providing for employees and former employees to travel to the U.S. for interviews. The SEC also noted that D&B's cooperation assisted the agency in collecting information that may not have been otherwise available to its staff.

上述机构肯定了邓白氏在调查期间的合作，表现为：自愿从海外提交文件，总结其内部调查的结论，翻译关键文件，及时提供证人访谈的概要，安排员工与证交会人员会面，安排员工和前员工赴美参加访谈。证交会还指出，邓白氏的合作协助该机构收集了本不易为该机构员工获取的信息。

The agencies also took notice of D&B's remedial measures, including ceasing operations of the Roadway subsidiary, discontinuing illicit practices at HDBC, terminating employees who were involved in misconduct, doubling the size of its audit services and corporate compliance teams, hiring legal and compliance employees in China, and developing and implementing FCPA compliance procedures, among others. The SEC and DOJ also noted that D&B undertook disciplinary actions against senior executives who had oversight responsibility for ensuring FCPA compliance.

上述机构还注意到邓白氏的补救措施，包括停止子公司车道的运营，中止 HDBC 的非法行为，解雇参与不当行为的员工，将其审计服务和公司合规团队规模扩大一倍，在中国聘请法务和合规员工，以及制订和实施 FCPA 合程序等等。证交会和司法部还指出，邓白氏对负有确保 FCPA 合规监督责任的高管也实施了纪律处分。

## Consequences 后果

---

To settle the SEC's claims that it violated the FCPA's books and records and internal controls provisions, D&B agreed to disgorge almost \$6.1 million and pay over \$1.1 million in prejudgment interest. The SEC also imposed a \$2 million civil penalty.

为就证交会对其违反 FCPA 账簿和记录和内部控制规定的指控达成和解，邓白氏同意缴出约 610 万美元的非法所得，并支付超过 110 万美元的判决前利息。证交会还对邓白氏处以 200 万美元的民事罚金。

## Key Observations and Lessons Learned 主要意见和汲取的教训

---

- **Disgorgement Without Anti-bribery Findings:** The D&B enforcement action is the latest example of the SEC seeking a disgorgement remedy in the absence of FCPA anti-bribery charges or findings. Specifically, \$6.1 million of the \$9.2 million settlement amount was categorized as disgorgement.

**缴出非法所得则无反贿赂结论：**邓白氏执法行动是证交会在未提出 FCPA 反贿赂指控或结论的情况下寻求缴出非法所得救济的最新案例。具体而言，920 万美元的和解金额中有 610 万美元被列为缴出的非法所得。

- **Importance of Post-acquisition Integration:** This enforcement action highlights the importance of conducting timely post-acquisition compliance integration -- not just pre-acquisition compliance due diligence -- to ensure that companies do not run afoul of the FCPA when acquiring new companies. Although D&B accurately identified anti-corruption compliance and controls issues during pre-acquisition diligence, it failed to remediate those issues.

**收购后整合的重要性：**此项执法行动凸显了及时进行收购后合规整合（而不仅仅是收购前合规尽职调查）的重要性，这是为了确保企业在收购新公司时不会违反 FCPA。尽管邓白氏在收购前尽职调查中准确地发现了反腐败合规和控制问题，但未能纠正这些问题。

- **Use of Third Parties:** The use of third parties continues to present significant bribery and corruption risks, especially in countries with high corruption risk or in industries with significant government touchpoints.

**第三方的使用：**第三方的使用仍存在重大的贿赂和腐败风险，在具有高腐败风险的国家或密切接触政府的行业尤其如此。

\* \* \*

If you have any questions concerning the material discussed in this alert, please contact the following China-based members of our [Global Anti-Corruption](#) practice group:

如果您对本电子期刊的内容有任何疑问，请联络我们[全球反腐败业务组](#)以下中国团队成员。

Eric Carlson 柯礼晟 (Shanghai)	+86 21 6036 2503	<a href="mailto:ecarlson@cov.com">ecarlson@cov.com</a>
Min He 何敏 (Beijing)	+86 10 5910 0510	<a href="mailto:mhe@cov.com">mhe@cov.com</a>
James Yuan 苑轲 (Shanghai)	+86 21 6036 2516	<a href="mailto:jyuan@cov.com">jyuan@cov.com</a>
Ping An 安平 (Shanghai)	+86 21 6036 2512	<a href="mailto:pan@cov.com">pan@cov.com</a>
Huanhuan Zhang 张欢欢 (Shanghai)	+86 21 6036 2515	<a href="mailto:h Zhang@cov.com">h Zhang@cov.com</a>
Nicole Ma 马文涵 (Shanghai)	+86 21 6036 2518	<a href="mailto:nma@cov.com">nma@cov.com</a>
Audrey Zhi 支虹 (Shanghai)	+86 21 6036 2609	<a href="mailto:azhi@cov.com">azhi@cov.com</a>

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

本文信息无意作为法律意见。阅读者在就本文中提及的事项采取行动前应寻求具体的法律意见。

In an increasingly regulated world, Covington & Burling LLP provides corporate, litigation, and regulatory expertise to help clients navigate through their most complex business problems, deals and disputes. Founded in 1919, the firm has more than 1000 lawyers in offices in Beijing, Brussels, Dubai, Frankfurt, Johannesburg, London, Los Angeles, New York, San Francisco, Seoul, Shanghai, Silicon Valley, and Washington.

在监管日益严格的世界里，科文顿·柏灵律师事务所为客户提供公司、诉讼及监管专业知识，以帮助其处理最为复杂的业务问题、交易和争议。本律师事务所成立于1919年，在北京、布鲁塞尔、迪拜、法兰克福、约翰内斯堡、伦敦、洛杉矶、纽约、旧金山、首尔、上海、硅谷和华盛顿设有办事处，拥有1000多名律师。

This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to [unsubscribe@cov.com](mailto:unsubscribe@cov.com) if you do not wish to receive future emails or electronic alerts.

本通讯旨在向我们的客户及其他有兴趣的同事提供相关的动态。如果您将来不希望收到电邮或电子资讯，请发送电邮至 [unsubscribe@cov.com](mailto:unsubscribe@cov.com)。

© 2018 Covington & Burling LLP. All rights reserved.

© 2018 科文顿·柏灵律师事务所。保留所有权利。